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Critical Review on Improving the Claim Management Process in Malaysia

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Abstract: Claims for additional costs and time extensions result from a variety of events occurring during the course of construction. To enhance the chances of success, contractors when submitting their claims must closely follow the steps stipulated in the contract conditions, by providing a breakdown of alleged additional costs and time with sufficient documentation. This paper aims to provide a better insight on the process of claims management in the Malaysian construction industry. It is reviewing the early part of the PhD research and hopefully the findings will try to generate means of improving the claims management process. With the proper claim management framework, it is hoped that contractors can utilize it to improve their claim management process in the future.

Keywords: *Claims, claim management, claim framework*

1. Introduction

The construction sector is one of the main economic engine sectors supporting the Malaysian economy. The expansion of this sector has led to the revival of the construction profession, and the promotion and encouragement of new investments. The sector has played a crucial role in extending job opportunities for the Malaysian labour force. Its expansion has generated many jobs for skilled, semiskilled and unskilled workers. Construction projects are conventionally designed to a client's brief by a design organization, and a contractor is then appointed by the client to build the designed works. It has been an unfortunate characteristic of the construction industries in many countries that projects are seldom completed on time or to budget (Sheikh et al (2003). Construction projects are often delayed by unforeseen conditions and poor management practices. The drive to build cheaper and faster products sometimes will result in several problems for engineers and managers on the construction site (Singh et al., 2006).Over the past decades, construction projects are becoming more complex due to new standards, advanced technologies and owner-desired additions and changes. While the successful completion of projects has been thought to depend mainly on cooperation between the contractor, consultant and owner, problems and disputes have always erupted due to conflicting opinions as to the various aspects of design and construction (Essam, 2006). The increased complexity of construction processes, documents, and conditions of contracts has been contributing to higher possibilities of disputes, conflicting interpretations, and adversarial attitudes (Surawongsin, 2002). All the above factors have made claims an inevitable burden of implementing today's construction projects. Construction claims have such high impact on construction project's cost and time that an effective claim management system in any construction organization deserves serious attention (Chovichien & Tochaiwat, 2006). The concept of a construction claim is not new, but what has been lacking is the methodology that can help construction managers assess the level of effectiveness in their construction claim process. The need for such a structured instrument for auditing construction contractors' claim process cannot be ignored.

Aims and Objectives: The aim of this study is to produce a framework in order to assist contractors in managing their claims, by providing better insight of the status of claims management. In order to facilitate the research aim, the following objectives have been drawn up:

- To identify the existing claim management provisions related to the contractors.
- To access the legal issues related to claim process by contractors.
- To identify the problems associated with the claim process experienced by the contractors.
- To identify the areas related to claim process that can be effectively improved.
- To recommend improvement by producing a framework in the claim process.

Problem Statement: Even though construction claims have considerable effects on the projects, they are not always given adequate considerations. From the project employers' point of views, one of the problems is that they do not realize the required data in managing their claims and how important such data are (Tochaiwat, 2006). Construction claims and disputes can occur in both public and privately funded projects, and in projects with small, as well as large funding. In fact, no project can be considered protected from a potential claim. Such claims can lead to significant financial damages. Therefore, all parties including the owner, designer and contractor should fully understand the claim process (Singh et al., 2006). Inadequacies of supporting evidences, stemming from unaware project personnel as well as an improperly designed documentation system, are also serious shortcomings causing a loss of chance to recover incurred damages. The management level needs to pay more attention to these aspects for having an effective claims management system (Surawongsin, 2002). Construction claims have such high impacts on construction projects' cost and time that an effective claim management system in an employer's organization deserves serious attention (Chovichien & Tochaiwat, 2006). Construction Claim Management is the process to control the claims, defined as the seeking of consideration or change by one party in the construction project against another party. Because of the substantially increasing number of construction claims nowadays, the implementation of the effective construction claim management is needed (Tochaiwat, 2006). A need for an overall step-by-step procedure for claims analysis and administration is crucial for achieving proper resolutions and for preventing claims from developing into disputes. Although the process is general to a certain extent, each particular node can be further developed, depending on the peculiarities of each claim and project (Abdul-Malak et al., 2002).

Although the extensive studies on claim management theories and practices, the increasing incidence of claims and disputes imply that, the current claims management principles and process are ineffective in meeting industry requirements. Because of the unpredictable nature of construction projects, it is also unrealistic to expect that claims can be avoided or resolved by a single principle or method. The improvement of construction claims management will be a long strategic task for the industry (Ren & Anumba, 2003). They also need to be prepared and well-versed in how to identify, prepare, and defend a claim. For this reason, the claim management process should be clear and understood by all project parties, especially the contractor so that they know how to present claims in a way that ensures receiving their rights (Enshassi & Mohamed, 2009). In Malaysia, Pertubuhan Arkitek Malaysia (PAM) Standard forms of contract 2006, Public Works Department (PWD) Standard forms of contract 203A (2010) and CIDB 2000 form are the most common types of standard forms of contract being used in the construction industry. PAM forms are the most popular standard forms of contract for private sector meanwhile PWD forms are widely being used in government's projects. The latest version of PWD forms is PWD 203A (2010) and in the meantime the revised version of PAM form is PAM 2006. There is only one edition of CIDB form, which is the CIDB 2000 edition. All standard forms of contract provide clauses for the delay. Provision for EOT in PAM 2006 has been explained in Clause 24. Meanwhile in PWD 203A (2010) it has been covered under Cause 44 and for CIDB 2000, delays and extension of time is explained under Clause 31 and 32. All local Standard forms of contract have listed out claim event that will entitled the contractor for the loss and expenses. However, there are no clear guidelines and explanation on what are the appropriate procedures as a guide for the claimant in substantiating their claim. As a result, many claim has been unsuccessful due to the reason such as the application is not in proper order, a lot of information that is supposed to be there but are not, and the quality of submission are not up to the standard. A clear explanation is needed in order to assist the contractor in preparing the claim. A proper documentation and complete evidences relating to the delay events is required so that it will help the consultant in assessing the claim submitted by the contractor especially for the newcomer in the industry. Claim management process should be clear and understood by all project parties particularly the contractor to ensure their rights on the claim.

2. Literature Review

A claim in the construction industry may be caused by one or a combination of several reasons. It may start with a straightforward reason. The effect of this claim may affect another situation. This may lead to a substantial set of interrelated complex claims (Arditi & Bhupendra, 2005). Most of the typical claims are caused by causes like differing site conditions, change orders, delays, impact and ripple effects of delays,

inspection problems, owner furnished items, the difference in the interpretation of plans and specifications, unfulfilled duties, acceleration, inefficiency and disruption, unrealistic contract duration and cost (Callahan, 1998). A claim also happens when a party to a construction contract think that, in some way, by act or omission, the other party has not fulfilled its part of the deal. In other words, a claim arises when one party to the contract has suffered a damage for which that party needs to be compensated by the other party (Kartam, 1999). Claims take place as a result of numerous factors including improperly drafted contract documents, inaccurately prepared bids and owners failing in their responsibility to provide site access or to take other required action in a timely manner, and inadequate contract administration on the part of owners, contractors, architect/engineers, and other participants in the construction process (Yates, 2006). Claims can be made by contractors against owners and by owners against contractors and can also involve A/Es, subcontractors, suppliers, and bonding companies. Construction claims are found in nearly every construction project (Tochaiwat, 2006). A survey done in Western Canada found that the large majority of claims in construction project involved some delay and in many cases delay goes beyond the original contract duration by over 100%. More than half of the claims were an additional cost of at least 30% of the original contract values (Semple et al., 1993). Other research works done in the United States and in Thailand illustrated the similar results that the average cost growth causing by claims was about 7% of the original contract value (Khanchitvorakul, 2000).

It has been reported that the total value of construction claims in the United Arab Emirates alone reached USD4 billion in the year 2004 (Al Bawaba, 2005). Construction claims in the United Arab Emirates appear to hold back the completion of the construction and cause delays in delivering projects. A further study indicated that construction claims are caused by the size and duration of the project, complexity of contract documents, poor communication, limited resources, financial constraints, inadequate design, labour issues, and force majeure events (Essam, 2006). Unforeseeable site conditions, unrealistic planning and specifications, changes by the client, acceleration, unfulfilled duties by project participants and 'force majeure' are the direct causes of claims. Some projects suffered the increased cost of more than 30 percents for solving claims while some projects experienced delay longer than their original time for completion. Because of their high impacts on the project's success, the construction project employers should establish an effective claim management in their organizations (Singh & Sakamoto, 2001). Project owners need to follow an overall comprehensive step-by-step procedure for tracking and managing the claims submitted by contractors (Singh & Sakamoto, 2001). Once a claim has been presented, the owner and contractor can come to an agreement concerning the claim and thereby, create a change order or a modification, or they may disagree and create a construction contract dispute. The complexity and long-term nature of construction projects, combined with influence from other unforeseeable factors, make claims inevitable in the construction process (Essam, 2006).

Management of claims is the management of risks. It begins with the allocation of risk in the project owner's selection of a particular construction method, continues in the prime contract, subcontracts and purchase orders, and culminates in the prevention of and, if necessary, the successful resolution of changes and any claims that occurs during a project (Robert, 1997). Construction claims are contractor's legal rights of contract and it is also the legal means to maintain economic interests. Along with the development of market economy, the construction company needs to pay more attention to claim management (Songseng & Jing, 2011). The challenge under these circumstances is to find efficient ways of preparing, evaluating, and settling claims. This should begin with an investigation of aspects of the claim management process that hinder their preparation and evaluation in a speedy and transparent manner (Vidogah & Ndekugri, 1997). There is also concern that having adequate claims management procedures are likely to add to project costs. If such costs are reflected in tenders, there is the danger that the well organized contractors will lose jobs to less organized ones. This suggests that project owners have a big role to play if controversy is to be taken out of claims (Tochaiwat, 2006). Having well organized claim management procedures should not be seen as evidence of an unhealthy "claims conscious" attitude. Rather, owners and their advisors should see the advantages in such transparent procedures and take account of this in their tendering procedures and decisions. It must be emphasized that to ensure good practice there must be a commitment to make available the necessary human resources and comply fully with laid down procedures (Kangari, 1995).

The key objective of the claim management process is to resolve a certain problem in an effective and efficient way. Avoiding litigation and arbitration in claim settlement is a good practice that the successful contractors must keep in mind (Enshassi & Mohamed, 2009). Naturally, all project participants have a keen interest in avoiding and minimizing the problems that lead to claims. Sizeable claims harm both the owner and contractor. An owner may suffer loss of income, problems with funding or delayed occupancy. A contractor may face financial instability due to the loss of payments. It is wise for anyone involved in the industry to become familiar with the claims management process (Spittler & Jentzen, 1992). The concept of claim management is not new but has been lacking is the methodology that can help construction managers assess the level of effectiveness in their construction claim process. The need for such a structured instrument for auditing construction contractors' claim process cannot be overemphasized for the purpose of reducing time and cost increase.

3. Methodology

To ensure the achievement of the aim and objectives of this research, triangulation approach will be adopted. The triangulation method comprises:

- Multiple data sources of literature review and respondents' organisations.
- Multiple research methods of quantitative and qualitative approaches.
- Validation of the multiple research methods of quantitative and qualitative approaches.

In this study, there are four methods will be used for data collection. Firstly, non-empirical theory will be gathered from the extensive literature review forms. Secondly, the quantitative method of questionnaire surveys will be used to gather primary data to discover the problems associated with the claim process experienced by the contractors and to identify the areas related to claim process that can be effectively improved. Thirdly, the qualitative method of in-depth interview, which will validate data, obtained from the quantitative data and fourthly, data gathered from the quantitative and qualitative method will be forwarded to an expert panel to validate the final findings. The triangulation research will provide several opportunities to the researcher, which will make the research more robust and therefore, enable a much higher quality of data to be gathered and results to be achieved. It will also enable the integration of quantitative results of the questionnaire survey, which will be tested against the qualitative data from the interviews. Results from both quantitative and qualitative methods will be confirmed again by an expert panel to validate the final findings of this study.

Significance of Research: The scope of this research will focus on identifying the rationale for unsuccessful claims application from the contractor's point of view. However, this study will concentrate on construction projects that are using PWD 203A (2010) and PAM 2006 form of contract. The target despondences are Class Grade 7 and Grade 6 contractors registered with Malaysian Construction Industry Board (CIDB) involving in civil and building works. This study also will focus on contractual types of claim since the legal basis of the claim proper is found in the specific provision of the contract. Therefore, it is beyond the scope of this study to discuss other than which has been highlighted above.

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References

Abdul-Malak, M. A. U., Mustafa, A. M., El-Saadi, M. H. & Abou-Zeid, M. G. (2002). Process Model for Administrating Construction Claims. Journal of Management in Engineering, April 2002.

Al Bawaba. (2005). UAE construction claims up to 10 times, available at: www.albawaba.com/en/countries/UAE/184821.

Arditi, D. & Bhupendra, K. P. (2005). Selecting a Delay Analysis Method in Resolving Construction Claims. *International Journal of Project Management*, 24, 145–155

Callahan, J. T. (1998). Managing Transit Construction Contract Claims. Synthesis of Transit Practice. Washington : National Academic Press

Chovichien, V. & Tochaiwat, K. (2006). Information System for Managing Employer's Construction Claims. Technology and Innovation for Sustainable Development Conference (TISD2006).

Enshassi, A. & Mohamed, S. (2009). Problems Associated with the Process of Claim Management in Palestine. *Journal of Engineering Construction and Architectural Management*, 16, 61-72.

Essam, K. Z. (2006). Construction Claims in United Arab Emirates: Types, Causes and Frequency. *International Journal of Project Management,* 24, 453-459.

Hassanein, A. A. G. & El Nemr, W. (2008). Claims management in the Egyptian industrial construction sector. *Engineering, Construction and Architectural Management*, 15(3), 246-59.

Ho S. P. & Liu, L. Y. (2004). Analytical model for analyzing construction claims and opportunistic bidding. *Journal of Construction Engineering and Management*, 130(1), 94–104.

Hughes, G. A. & Barber, J. N. (1992). Building and Civil Engineering Claims in Perspective. London, Longman Scientific & Technical.

Kangari, R. (1995). Construction claim documentation in arbitration. J. Constr. *Engineering and Management ASCE*, 121(2), 201-208.

Kartam, S. (1999). Generic methodology for analyzing delay claims. *Journal of Construction Engineering and Management*, 125(6), 409-19.

Khanchitvorakul, S. (2000). Development of Construction Claim Supporting System. Master of Engineering King Mongkut University of Technology Thonburi.

Ren, Z. & Anumba, C. J. (2003). The Development of a Multi-Agent System for Construction Claims Negotiation. *Journal of Advances in Engineering Software*, 31, 683-696.

Robert, K. C. (1997). Managing Change Orders and Claims. Journal of Management in Engineering, January.

Semple, C., Hartman, F. T. & Jergeas, G. (1993). Construction claims and disputes: causes and cost/time overruns. *J. Constr. Engrg. and Mgmt., ASCE*, 120(4), 785-795.

Sheikh S. J. A. A. S., Sami, M. F. & David, J. H. (2003). A database management system to document and analyse construction claims. *Journal of Advances in Engineering Software*, 34, 477–491

Singh, A. & Sakamoto, I. (2001). Multiple Claims in Construction Law: Educational Case Study. Journal of Professional Issues in Engineering Education & Practice.

Singh, P., Fook, C. Y. & Sidhu, G. K. (2006). A Comprehensive Guide to Writing a Research Proposal. Batu Caves: Venton Professional.

Songseng, Y. & Jing, X. (2011). Construction Claims Management of Civil Engineering. *Advanced Materials Research*, 243-249, 6348-6351

Spittler, J. R. & Jentzen, G. H. (1992). Dispute resolution: Managing construction conflict with step negotiations. AACE Transactions, D9, 1–10.

Surawongsin, P. (2002). The Implementation of Construction Claims Management in the Thai Construction Industry, Master Thesis School of Civil Engineering Asian Institute of Technology[AIT], Pathumthani, 2002.

Tochaiwat, K. (2006). An Analysis of the Employers' Claim Management System in International Construction Projects. Proceeding of 11th National Convention of Civil Engineer, Phuket.

Tochaiwat, K. & Chovichien, V. (2004). Strategic Data for Employers' Claims. International Symposium on Globalisation and Construction: CIB-W107.

Vidogah, W. & Ndekugri, I. (1997). Improving Management of Claims. *Journal of Management in Engineering*, 11(1), 58-63.

Yates, J. K. (2006). Avoiding and Minimizing Construction Delay Claim Disputes in Relational Contracting. *Journal of Professional Issues in Engineering Education and Practice*, 3, 168-179

Yogeswaran, K., Kumaraswamy, M. M. & Miller, D. R. A. (1998). Claims for extensions of time in civil engineering projects. *Construction Management and Economics*, 16(3), 283–93.